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9 [Proposed] Counsel for Debtor and Debtor in Possession

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re: CASE NO.: BK-N-20-50471-btb
Chapter 11 Subchapter V

ALY EATERY, INC.,

Debtor.

**EX PARTE APPLICATION FOR ORDER
AUTHORIZING THE RETENTION AND
EMPLOYMENT OF DARBY LAW
PRACTICE, LTD. AS COUNSEL TO THE
DEBTOR PURSUANT TO 11 U.S.C. §
327(a), FED. R. BANKR. P. 2014(a),
2016(b) AND 5002, AND LOCAL RULE
2014**

Hearing Date: *Ex Parte*
Hearing Time:

Debtor and Debtor in Possession, ALY EATERY, INC., hereby submits this application (the “Application”) for an order pursuant to Section 327(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rules 2014(a), 2016(b) and 5002 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), and Rule 2014 of the Local Bankruptcy Rules for the District of Nevada (as amended, the “Local Rules”), authorizing the retention and employment of KEVIN A. DARBY, ESQ. of DARBY LAW PRACTICE, LTD. (“Darby Law Practice”) as bankruptcy counsel and, in support thereof, respectfully represents as follows:

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LEGAL MEMORANDUM

I. Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

II. Relief Requested

2. By this Application, the Debtor seeks to employ and retain Darby Law Practice to represent the Debtor as counsel in connection with the filing and prosecution of the above captioned Chapter 11 Subchapter 5 case. Accordingly, the Debtor respectfully requests that the Court enter an order pursuant to Bankruptcy Code Section 327(a), Bankruptcy Rules 2014(a), 2016(b), and 5002, and Local Rule 2014 authorizing the Debtor to employ and retain Darby Law Practice under a general retainer as their attorney to perform services pursuant to the fee agreement (the “Fee Agreement”), attached as Exhibit 1 in the Declaration of Kevin A. Darby, filed in support of this Application (the “Darby Declaration”).

III. Background Facts

3. On May 4, 2020, Debtor filed a voluntary petition for relief under Subchapter 5 of Chapter 11 of the Bankruptcy Code (the “Petition Date”).

IV. Services to Be Provided

4. Subject to further order of the Court and consistent with the Fee Agreement, the Debtor requests the employment and retention of Darby Law Practice to render the following professional services:

a. to advise the Debtor of its rights, powers and duties as a debtor and debtor in possession in the continued operation of business and management of their properties;

b. to take all necessary action to protect and preserve the Debtor’s estate, including the prosecution of actions on the Debtor’s behalf, the defense of any actions commenced against the Debtor, the negotiation of disputes in which the Debtor is involved, and the preparation of objections to claims filed against the Debtor’s estate;

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1 c. to prepare on behalf of the Debtor all necessary motions, applications,
2 answers, orders, reports and papers in connection with the administration of the Debtor's estate;

3 d. to attend meetings and negotiations with the Subchapter 5 trustee,
4 representatives of creditors, equity holders or prospective investors or acquirers and other parties in
5 interest;

6 e. to appear before the Court, any appellate courts and the Office of the United
7 States Trustee to protect the interests of the Debtor;

8 f. to pursue approval of confirmation of a plan of reorganization and approval
9 of the corresponding solicitation procedures and disclosure statement; and

10 g. to perform all other necessary legal services in connection with the Chapter
11 Subchapter 5 case. Darby Declaration, ¶ 2.

12 5. The Debtor submits that it is essential to employ Darby Law Practice as counsel to
13 provide the above services. The services of Darby Law Practice are necessary to enable the Debtor
14 to execute faithfully its duties as debtor in possession.

15 **V. Basis for Relief**

16 6. Under Bankruptcy Code Section 327(a), the Debtor, "with the court's approval, may
17 employ one or more attorneys... that do not hold or represent an interest adverse to the estate, and
18 that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties
19 under this title." 11 U.S.C. § 327(a). Further, the employment may be set "on any reasonable terms
20 and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage
21 fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a).

22 7. The Debtor desires to employ Darby Law Practice as counsel in connection with the
23 representation of the Debtor in the Chapter 11 Subchapter 5 case commenced in the District of
24 Nevada.

25 8. Darby Law Practice is willing to render the necessary professional services as
26 counsel to the Debtor. The Debtor respectfully submit that Darby Law Practice is well qualified to
27 serve as counsel and assume the responsibilities required to render efficient representation to the
28 Debtor in this Chapter 11 case.

1 **VI. Darby Law Practice's Qualifications**

2 9. The Debtor has selected Darby Law Practice as counsel because of the firm's
3 experience and knowledge in the field of Debtor's rights, business reorganizations and liquidations
4 under chapter 11 of the Bankruptcy Code. Darby Law Practice has served as counsel to debtors in
5 several Chapter 7, 11 and 13 cases in the District of Nevada. Darby Declaration, ¶ 3.

6 **VII. Professional Compensation**

7 10. The Debtor submits that it is necessary to employ Darby Law Practice under a
8 general retainer to render the foregoing professional services. Darby Law Practice intends to apply
9 to the Court for allowance of compensation and reimbursement of expenses in accordance with
10 applicable provisions of the Bankruptcy Code, the Local Rules and pursuant to any applicable
11 procedures or orders established by the Court. Darby Declaration, ¶ 4. Darby Law Practice shall
12 submit with their fee applications detailed daily time entries for each individual providing services
13 in one-tenth (.10) hour increments, explaining services provided as well as a categorized summary
14 of disbursements and expenses for which Darby Law Practice is seeking reimbursement. Id.

15 11. The Debtor, subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules
16 and the Local Rules, proposes to pay Darby Law Practice their customary hourly rates in effect from
17 time to time as set forth in the Darby Declaration. Id. at ¶ 5. Presently, the hourly rates for
18 professionals range from \$400.00 - \$450.00. The Debtor submit those rates are reasonable.

19 12. The Debtor paid Darby Law Practice a retainer fee in the amount of \$4,217.00,
20 including the Chapter 11 filing fee.

21 **VIII. Disinterestedness**

22 13. Darby Law Practice is a "disinterested person" within the meaning of Section
23 101(14) of the Bankruptcy Code as required by Section 327(a) of the Bankruptcy Code and will not
24 hold or represent an interest adverse to the Debtor's estate and has no connection to the Debtor,
25 creditors, or any other party in interest, their respective attorneys and accountants, the United States
26 trustee, or any person employed in the office of the United States trustee. Id., at ¶ 10.

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1 **IX. Conclusion**

2 **WHEREFORE**, the Debtor respectfully request entry of an order substantially in the
3 form of Exhibit 1 attached hereto (i) granting the relief requested herein and (ii) such other and
4 further relief as the Court may deem just and appropriate.

5 DATED this 4th day of May, 2020.

6 DARBY LAW PRACTICE, LTD.

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8 By: /s/ Kevin A. Darby
9 KEVIN A. DARBY, ESQ.
[Proposed] Counsel for Debtor

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Exhibit 1
PROPOSED ORDER

EXHIBIT 1
PROPOSED ORDER

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16 Reorganization Counsel for Debtor
17 and Debtor in Possession

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

ALY EATERY, INC.,

Debtor.

CASE NO. : BK-N-20-50471-BTB
Chapter 11 Subchapter V

**ORDER GRANTING DEBTOR'S
APPLICATION AUTHORIZING THE
RETENTION AND EMPLOYMENT OF
DARBY LAW PRACTICE, LTD.
AS COUNSEL TO THE DEBTOR
PURSUANT TO 11 U.S.C. § 327(a), FED.
R. BANKR. P. 2014(a), 2016(b) AND 5002,
AND LOCAL RULE 2014,**

Hearing Date: *Ex Parte*

Hearing Time:

Upon the application (the "Application"), of Debtor and Debtor in possession, ALY EATERY, INC., (the "Debtor") in the above-captioned Chapter 11 case, for an order pursuant to Section 327(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rules 2014(a), 2016(b) and 5002 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rule 2014 of the Local Rules of Bankruptcy

1 Procedure for the District of Nevada (as amended, the “Local Rules”), authorizing the retention
2 and employment of Kevin A. Darby, Esq. of Darby Law Practice, Ltd. (“Darby Law Practice”) as
3 counsel to the Debtor; and this Court having considered the Declaration of Kevin A. Darby in
4 support of the Application (the “Darby Declaration”); and the Court being satisfied, based on the
5 representations made in the Application and the Darby Declaration, that Darby Law Practice
6 represents or holds no interest adverse to the Debtor or the estate with respect to the matters upon
7 which Darby Law Practice is to be engaged and is a “disinterested person,” as such term is defined
8 in Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy
9 Code; and the Court having jurisdiction to consider the Application and the relief requested therein
10 in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief
11 requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper
12 before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the
13 Application having been provided, and it appearing that no other or further notice need be
14 provided; and the relief requested in the Application being in the best interests of the Debtor and
15 their estate and creditors; and the Court having determined that the legal and factual bases set forth
16 in the Application establish just cause for the relief granted herein; and good cause appearing,

17 IT IS HEREBY ORDERED that the Application is granted in its entirety.

18 IT IS FURTHER ORDERED that pursuant to Section 327(a) of the Bankruptcy
19 Code and Bankruptcy Rules 2014(a), 2016(b) and 5002, the Debtor’s employment and retention
20 of Darby Law Practice as counsel in accordance with Darby Law Practice’s normal hourly rates
21 and disbursement policies as set forth in the Darby Declaration, and pursuant to the Fee Agreement
22 effective as of the Petition Date, is approved; and it is further

23 IT IS FURTHER ORDERED that Darby Law Practice shall apply for compensation
24 and reimbursement in accordance with the procedures set forth in Sections 330 and 331 of the
25 Bankruptcy Code, applicable Bankruptcy Rules, applicable Local Rules, guidelines established by
26 the Office of the United States Trustee for the District of Nevada, and such other procedures as
27 may be fixed by order of this Court.

28 IT IS FURTHER ORDERED that the prepetition retainer monies paid to Darby
Law Practice and not expended for prepetition services and disbursements shall be held by Darby

1 Law Practice as a general retainer as security throughout the Debtor's bankruptcy case until Darby
2 Law Practice's fees and expenses are awarded and payable to Darby Law Practice on a final basis.

3 IT IS FURTHER ORDERED that the terms and conditions of this order shall be
4 immediately effective and enforceable upon their entry; and it is further

5 IT IS SO ORDERED.

6 SUBMITTED BY :

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8 By: /s/ Kevin A. Darby
9 KEVIN A. DARBY, ESQ.
10 Darby Law Practice, Ltd.
11 4777 Caughlin Parkway
12 Reno, Nevada 89519
13 (775) 322-1237

14 APPROVED:

15 By: _____
16 Attorney for U.S. Trustee
17 Tracy Hope Davis

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